

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

FEB 5 2001

OFFICE OF
MANAGING DIRECTOR

Donald J. Evans, Esq.
Fletcher, Heald & Hildreth
1300 N. 17th Street, 11th Floor
Arlington, VA 22209

86-285

Re: Request for Deferral of
Application Fee
Fee Control No.: 00000RROG-00-002

Dear Mr. Evans:

This letter responds to your request for deferral of the filing fee submitted on behalf of Antilles Wireless Cable TV Company in connection with its MMDS license applications.

You state that Antilles was the winning bidder in an auction of MMDS spectrum in the Virgin Islands. In order to adequately serve the area and population, you assert that Antilles constructed five repeater stations, for which applications for covering licenses were filed. (Under Section 1.1104(7)(c) of the Commission's rules, the action sought was a certificate of completion of construction.) Because each station has a complement of eleven channels, and the filing fee for each channel is \$555, you state that the total filing fee is \$30,525. You assert that the cost of this fee presents an economic hardship and cannot be borne by Antilles's system without serious loss of service to the public. In support, you submit a letter from Cara Lyn Greco, chief executive of Antilles, who states that the filing fee represents over one-half of the operating budget for the current quarter and that the company is not yet half-way to a break even number of subscribers. Accordingly, you request that the fee be deferred for six months or, in the alternative, waived altogether.

Section 1.1117(c) of the Commission's rules provides that requests for deferral of a filing fee for financial hardship must be accompanied by supporting documentation. Moreover, in establishing its regulatory fee program, the Commission held that it would waive regulatory fees only upon presentation of a "compelling case of financial hardship" which is fully documented. See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994); recon. granted, 10 FCC Rcd 12759 (1995). The standard adopted by the Commission for ruling on regulatory fee waiver requests based on financial hardship is equally applicable to a request for waiver of a filing fee based upon financial hardship. See Letter to Richard D. Stone (February 28, 1996). The Commission has stated that regulatees can establish financial need by submitting:

[I]nformation such as a balance sheet and profit and loss statement (audited, if available), a cash flow projection . . . (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information.

10 FCC Rcd at 12761-62.

In determining whether a licensee has sufficient revenues to pay its regulatory fees, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits. Thus, although deductions for amortization and depreciation, which do not affect cash flow, and payments to principals, reduce gross income for tax purposes, those deductions also represent money which is considered to be available to pay the regulatory fee.

In the absence of appropriate documentation, you have failed to establish a compelling case of financial hardship. Therefore, your request for deferral or, in the alternative, waiver of the filing fee is dismissed. Payment of the filing fee of \$30,525 is now due and should be submitted together with a Form 159 (copy enclosed) within 30 days from the date of this letter. In view of your allegations of financial hardship, however, in lieu of payment, your request for waiver may be refiled together with appropriate supporting documentation within 30 days from the date of this letter. Because payment has in effect been deferred for over six months from the time Antilles filed the subject applications, no further deferral will be granted. See 47 CFR 1.1117(d); Letter to Nextel Communications, Inc. (August 27, 1996), rev. denied, 15 FCC Rcd 3126 (2000).

If payment or a refiled request is not received within 30 days from the date of this letter, Antilles will be assessed a late fee of 25% of the unpaid amount of the filing fee. If you have any questions concerning the fee payment, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark A. Reger
Chief Financial Officer

Enclosure

ORIGINAL RECEIVED

DEC 11 1997

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*ADMITTED N.Y. ONLY

December 11, 1997

Supplemental
Info.

Managing Director
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

In re: Request for Deferral of Application Fee

Dear Sir:

On behalf of Antilles Wireless TV Company ("Antilles"), deferral of the filing fee normally required for MMDS covering license applications pursuant to 47 C.F.R. 1.1116 is hereby requested. This request is filed in conjunction with a group of 25 license applications filed herewith. In support of this request, the following is shown.

Antilles was the winning bidder in the 1996 auction of MMDS spectrum in the Virgin Islands. The Virgin Islands is a small U.S. territory with a total population of only 100,000. As such, it does not even qualify as a BTA but is, rather one of the small "BTA-like" areas auctioned by the Commission. Antilles bid and timely paid the U.S. treasury over \$700,000 for the BTA rights in the Virgin Islands. Antilles proceeded to build out its system on an expedited basis in response to the urgent need for video services on the island of St. Thomas.

The present difficulty arises as a result of the unique character of the Virgin Islands terrain and population, coupled with the Commission's extraordinarily large and unjustified filing fees for MMDS covering license applications. The character of the islands is such that the population is nestled in small nooks and valleys which are scattered over the islands. The islands themselves are extraordinarily hilly and mountainous. This circumstance presents a serious challenge to a microwave video service provider: in order to reach small pockets of people living in tiny valleys, numerous repeater stations must be constructed,

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each one serving only a small area. One such repeater station serves only about 10 families, but without this service the families in that area would have virtually no video service at all. (Cable TV is not generally available at this time.) To provide even minimal service, each repeater station must deliver the full complement of 11 channels which are available over the system.

This spring, in an effort to deliver service to otherwise unreachable pockets of citizens, Antilles applied for, and was granted, authority to build five repeater sites. (Applications for three other sites remain pending.) These stations have been constructed and covering licenses are now being filed. However, since each of the five sites involves 11 channels and the filing fee for each channel is \$555, the total filing fee for these applications will be \$30,525.

This fee is extremely high under any criterion. As pointed out by Antilles in its February 11, 1997 request for a refund of fees (not yet acted upon by the Commission), the applications involved here are simple notifications advising the Commission that the stations have been constructed in accordance with the underlying construction permit authorizations. The effort undertaken by the Commission staff with respect to these filings is a fraction of the effort involved in processing the initial application for authority to build there. Yet the fee, for no conceivable reason, is about five times greater.^{1/} It is clear, therefore, that there are serious problems with the level of the underlying fee and the way it is charged (i.e., by individual channel rather than by channel group or by all channels at a given site).

In the particular circumstances of Antilles, the excessiveness of the fee works a drastic disservice. First, as noted above, the terrain features in this area necessitate many small transmitters serving relatively small numbers of people. The cost of each transmitter therefore is significant even without

^{1/} For sound reasons, the Commission permits the initial application (Form 304) to be filed in groups of four channels for which only one \$155 fee is required. Unaccountably, the Commission requires four separate \$555 fees for each of the four channels when filing Form 304A.

EVANS & SILL, P.C.

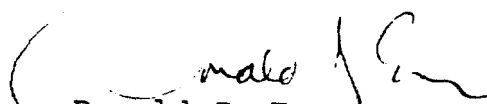
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consideration of the FCC fee associated with each site. To put the fee in context, the entire budget for Antilles for the fourth quarter of 1997 is less than \$60,000. See attached letter of Cara Lyn Greco, chief executive of Antilles. The FCC fee for filing a group of simple two page applications represents more than half of the entire budget for the system. Simply stated, this cost cannot be borne by a fragile island system of this size without serious loss of service to the public. In addition, some of the sites have been installed on what may well be a temporary basis as the signal delivery system is tested and public response is garnered. It is likely that some of the sites involved here will be taken out of service or relocated in order to provide service more efficiently. Yet a huge FCC filing fee will have been incurred for what was at most a temporary site. Unless these fees are waived or deferred, the installation of new repeaters to serve these pockets of residents will have to stop.

In no other service that we are aware of does the FCC filing fee represent such an enormous percentage of the cost of doing business. Here the system has been operating at a loss in an effort to build subscribership to the break even point. The FCC filing fee has the direct effect of placing such an onerous burden on the operator that a chill on the installation of new transmitters is imposed. This has the counterproductive effect of seriously limiting the system's ability to reach new and needy subscribers. In short, the FCC fee, if not deferred or waived, could have the effect of eliminating service on the island altogether by making it economically infeasible to provide the service necessary to break even.

Accordingly, Antilles requests that the Commission either defer the date on which the fee will be required to be paid for six months in order to give the system the time needed to build revenue or, in the alternative, that the fee be waived altogether as excessively high under the circumstances presented here.

Yours very truly,



Donald J. Evans
Counsel for Antilles
Wireless TV Company

ANTILLES WIRELESS CABLE TV, Co.

December 10, 1997

CONFIDENTIAL INFORMATION

Secretary
Federal Communications Commission
1919 M Street
Washington, DC 20554

Subject: Covering Licenses - Antilles Wireless Cable TV, Co.

Dear Secretary:

This letter is written to request an extension of time in which to pay the fees due for the covering licenses for our repeat sites in St. Thomas, Virgin Islands.

Payment of the covering license fees at this time would place an enormous hardship on our small company. In that regard, the expense represents over one-half of our operating budget for the quarter. Further, we are not even half way to a break even number of subscribers.

Thank you for your consideration of our request.

Sincerely,


Cara Lyn M. Greco
for Antilles Wireless Cable TV, Co.

Buccaneer Mall
Suite 107, Box 7
St. Thomas, Virgin Islands 00802
Telephone: (340) 777-1669
Facsimile: (340) 777-1313